

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

RICHARD C. MALLERY,

Claimant,

v.

PROGRESSIVE LOGISTICS,  
dba GILTNER TRUCKING,

Employer,

and

THE CURA GROUP,

and

CNA/RSKCO c/o CRAWFORD AND  
COMPANY,

Sureties,

Defendants.

**IC 03-003816  
03-005856**

**ORDER**

Filed: December 9, 2004

Pursuant to Idaho Code § 72-717, Referee Rinda Just submitted the record in the above-entitled matter, together with her proposed findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant, an employee of Employer Giltner Trucking, sustained bilateral shoulder injuries in a work-related accident on March 3, 2002.
2. Giltner Trucking was an uninsured Employer on March 3, 2002.

3. Claimant is entitled to necessary medical treatment, including: payment of outstanding medical care related to the bilateral shoulder injury and subsequent elbow injury on and after November 21, 2002; reimbursement for amounts paid by Claimant for medical care and costs of transportation incurred to date; and the costs of future medical care related to the bilateral shoulder injuries and the subsequent olecranon bursa injury that resulted from the original injuries. Employer shall receive credit for any amounts paid by TCG.

4. Claimant's average weekly wage for the 52 weeks preceding his injury is \$751.80. This results in a compensation rate of \$503.71 per week for the first 52 weeks. Thereafter, he shall receive TTDs at the rate of 67% of the applicable average weekly state wage until he has reached maximum medical improvement or returned to light duty work.

5. Claimant is entitled to TTD or TPD benefits from November 21, 2002 until he reaches medical stability. Employer Giltner is entitled to credit for any TTDs paid by TCG.

6. Employer Giltner shall pay a statutory penalty in the amount of 10% of the total amount of compensation awarded Claimant by this decision, together with attorney fees and costs, for failure to secure workers' compensation coverage for its employees.

7. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 9th day of December, 2004.

INDUSTRIAL COMMISSION

/s/ \_\_\_\_\_  
R.D. Maynard, Chairman

/s/ \_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

/s/ \_\_\_\_\_  
James F. Kile, Commissioner

ATTEST:

/s/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of December, 2004, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

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djb

/s/ \_\_\_\_\_